

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND,  
Plaintiff

v.

WILLIAM H. COSBY, JR.,  
Defendant

:  
: CIVIL ACTION  
:  
: NO. 05-CV-1099  
:  
:  
:

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2005, upon consideration of  
Defendant's Motion to Compel Plaintiff's Initial Disclosures, supporting Memorandum of Law  
and opposition thereto, IT IS HEREBY ORDERED that the motion is **DENIED**.

BY THE COURT:

\_\_\_\_\_  
J.

TROIANI/KIVITZ, L.L.P.  
Bebe H. Kivitz, Esquire  
I.D. No.: 30253  
Dolores M. Troiani, Esquire  
I.D. No.: 21283  
38 North Waterloo Road  
Devon, PA 19333  
(610) 688-8400

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND,	:
Plaintiff	: CIVIL ACTION
	:
v.	: NO. 05-CV-1099
	:
WILLIAM H. COSBY, JR.,	:
Defendant	:

**PLAINTIFF'S RESPONSE TO DEFENDANT'S  
MOTION TO COMPEL PLAINTIFF'S INITIAL DISCLOSURES**

Plaintiff denies that defendant is entitled to an order compelling plaintiff to comply with the requirements of Federal R. Civ. Proc. 26(a)(1) and states further that plaintiff has complied with said rule. In support of her Response to Defendant's Motion, plaintiff relies on the accompanying Memorandum of Law, which is incorporated by reference as if fully set forth herein.

Respectfully submitted,

TROIANI/KIVITZ, L.L.P.

/s/ Bebe H. Kivitz  
Bebe H. Kivitz, Esquire  
Dolores M. Troiani, Esquire  
Attorneys for Plaintiff

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Attorneys for Plaintiff

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**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT’S  
MOTION TO COMPEL PLAINTIFF’S INITIAL DISCLOSURES**

Plaintiff Andrea Constand (“Constand”) submits this Memorandum of Law in support of her Opposition to Defendant’s Motion to Compel Plaintiff’s Initial Disclosures. Defendant’s Motion to Compel is simply without merit.

**FACTUAL BACKGROUND**

In her Rule 26(a)(1) Initial Disclosures, attached hereto as Exhibit “A”, Plaintiff identified nine “Jane Doe” witnesses who are anticipated to present F.R.E. 415 testimony. Defendant is under the misimpression that plaintiff does not intend to disclose the identity of the Jane Doe witnesses to him. This is simply incorrect. Plaintiff’s counsel indicated as early as counsels’ conference on March 23, 2005, that plaintiff intends to disclose to defendant the identify of all her witnesses, but not before the Court rules on a

Motion to Protect the Identity of Rule 415 Jane Doe Witnesses<sup>1</sup> (“Motion to Protect”) from the media. As explained in her Motion to Protect, there are serious privacy concerns in connection with disclosing the witnesses’ names and addresses to the media, and therefore, plaintiff does not believe it is proper to do so until the necessary safeguards are in place.

### **ARGUMENT**

#### **Plaintiff Intends to Disclose Jane Doe Witness to the Defendant but only after their Identities are Protected from Public Disclosure.**

Plaintiff is not denying the defendant the right to discovery. To the contrary, plaintiff merely wishes to protect the identity of her witnesses, complainants concerning prior sexual assaults and/or druggings, from public disclosure<sup>2</sup>. As explained in plaintiff’s pending Motion to Protect the Identities of Jane Doe Witnesses, public disclosure of their identities raises important privacy concerns. Courts are willing to address these concerns when the witness’s privacy rights weighed against the public’s right to know their identity balances in favor of the witness. *See, e.g., James v. Tilghman*, 194 F.R.D. 398 (D. Conn. 1999) (protection of non-party inmate witnesses); *Jason Doe v. American Nat. Red Cross*, 151 F.R.D. 71, 72 (S.D. W.Va. 1993) (non-party blood donor); *Landano v. U.S. Dept. of Justice*, 956 F.2d 422 (3<sup>rd</sup> Cir. 1992) (non-parties appearing in FOIA requested documents); *Carhart v. Ashcroft*, 300 F. Supp.2d 921 (2004) (expert witness).

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<sup>1</sup> Now pending.

<sup>2</sup> In contrast, defendant has now taken the position that he will not be deposed -- despite earlier discussions between the parties concerning back-to-back depositions of defendant and plaintiff, and despite plaintiff’s initial request at counsels’ March 23, 2005 conference for convenient May dates in which to conduct defendant’s deposition. Plaintiff believes that there is simply no reason defendant’s deposition cannot take place within a reasonable period of time within the date the witnesses’ names are disclosed.

This precedent cogently demonstrates that a party has standing to protect the privacy rights of persons participating in litigation even though they may not be parties. Case law relied upon by defendants for the opposite proposition is clearly distinguishable. In *American Rock Salt Co., LLC v. Norfolk Southern Corp.*, 2005 WL 643414, 30 (W.D.N.Y. 2005), the issue before the court was a document request, not the privacy concerns of witnesses; and, in *Green v. Baca*, 2005 WL 283361, 1 (C.D. Cal. 2005), the issue was not discovery of witness identities but the right of a party to move to quash a third-party subpoena. In both cases the issue was access to discovery; here, Plaintiff is not denying defendant access to discovery; she only desires that public access to the witnesses' identities be restricted. Accordingly, Defendant's Motion to Compel should be denied.

### **CONCLUSION**

For the foregoing reasons, Plaintiff Andrea Constand respectfully requests this Court to deny Defendant's Motion to Compel Plaintiff's Initial Disclosures.

Respectfully submitted,

TROIANI/KIVITZ, L.L.P.

/s/ Bebe H. Kivitz  
Bebe H. Kivitz, Esquire  
Dolores M. Troiani, Esquire  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I, Bebe H. Kivitz, hereby certify that Plaintiff's Response and Memorandum of Law to Defendant's Motion Compel Plaintiff's Initial Disclosures was filed electronically and is available for viewing and downloading from the ECF system. I further certify that a true and correct copy of said document was served via regular First Class mail, postage prepaid, on the following:

Patrick J. O'Connor, Esquire  
George M. Gowen, III, Esquire  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103

Andrew D. Schau, Esquire  
Patterson Belknap Webb & Tyler, LLP  
1133 Avenue of the Americas  
New York, NY 10036

TROIANI/KIVITZ, L.L.P.

/s/ Bebe H. Kivitz  
Bebe H. Kivitz, Esquire  
Dolores M. Troiani, Esquire  
Attorneys for Plaintiff

Date: April 19, 2005

# **EXHIBIT “A”**

TROIANI/KIVITZ, L.L.P. Attorneys for Plaintiff  
Bebe H. Kivitz, Esquire  
I.D. No.: 30253  
Dolores M. Troiani, Esquire  
I.D. No.: 21283  
38 North Waterloo Road  
Devon, PA 19333  
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**SELF-EXECUTING DISCLOSURES PURSUANT TO  
FEDERAL R. CIV. PROC. 26(a) & 28 U.S.C. §473(a)(4)**

Plaintiff, by and through her counsel, Troiani/Kivitz,  
L.L.P., provides the following disclosures:

**A. WITNESSES:**

1. Andrea Constand  
Confidential address  
Pickering, Ontario
2. Gianna Constand  
Confidential address  
Pickering, Ontario
3. Detective Richard Shaffer  
Cheltenham Township Police Dept.  
8230 Old York Road  
Elkins Park, PA 19027
4. Lt. Richard Peffall  
Montgomery County Detective Bureau  
One Montgomery Plaza, Suite 502  
Norristown, PA 19401



5. Jennifer Sprague  
Psychotherapist  
53 Rabbit Street  
Lakefield, Ontario
6. William H. Cosby, Jr.  
8210 New Second Street  
Cheltenham, Pennsylvania
7. Barry Levine  
The National Enquirer, Inc.  
1000 American Media Way  
Boca Raton, Florida 33464
8. Joe Tobin  
Celebrity Justice  
New York, New York

Fed. R. Evid. 415 Witnesses, as to prior sexual assaults:

9. Tamara Lucier Green, Esquire  
Confidential address  
Ventura, California  
Plaintiff believes this witness is in the process of  
retaining legal counsel
10. Jane Doe 1  
Confidential address  
Taos, New Mexico  
Represented by Joyce Dale, Esquire, Media, PA  
Witness may be contacted through her legal counsel
11. Jane Doe 2  
Confidential address  
Spring Hill, Florida  
Represented by Joyce Dale, Esquire, Media, PA  
Witness may be contacted through her legal counsel
12. Jane Doe 3  
Confidential address  
Las Vegas, Nevada  
Represented by Joyce Dale, Esquire, Media, PA  
Witness may be contacted through her legal counsel

13. Jane Doe 4  
Confidential address  
Portola Valley, California  
Represented by Joyce Dale, Esquire, Media, PA  
Witness may be contacted through her legal counsel
14. Jane Doe 5  
Confidential address  
Denver, Colorado  
Plaintiff believes this witness is in the process of  
retaining legal counsel
15. Jane Doe 6  
Confidential address  
Toledo, Ohio  
Represented by Joyce Dale, Esquire, Media, PA  
Witness may be contacted through her legal counsel
16. Jane Doe 7  
Confidential address  
Cave Creek, Arizona  
Represented by Joyce Dale, Esquire, Media, PA  
Witness may be contacted through her legal counsel
16. Jane Doe 8  
Confidential address  
Monument, Colorado
16. Jane Doe 9  
Confidential address  
Corralitos, California  
Plaintiff believes this witness is in the process of  
retaining legal counsel

Plaintiff reserves the right to supplement this list as a result of discovery and/or as additional information becomes known or available to her, as additional Jane Doe witnesses are located, or as additional Jane Doe witnesses who have contacted Plaintiff's counsel indicate their willingness to be listed as trial witnesses.

#### **B. DOCUMENTS**

1. Documents constituting the criminal investigation in this matter.

2. Documents constituting transcripts of telephone conversations by Mr. Cosby and his authorized agents.

3. Relevant publications, including February 7, 2005, Celebrity Justice and March 4, 2005, Enquirer, and other relevant documents in possession of Celebrity Justice, The Enquirer, or other publications concerning Defendant's statements, statements of his representatives or agents, and statements made by potential witnesses to representatives of such publications.

4. Documents within the possession of the New York County District Attorney's Office and/or 19<sup>th</sup> Police Precinct, New York, NY, concerning Lachele Covington's allegation of sexual assault made against Defendant in 2000.

Plaintiff reserves the right to supplement this list as a result of discovery and/or as additional information becomes known or available to her.

**C. DAMAGES**

Plaintiff has sustained emotional and psychological damage, including post-traumatic stress disorder, anxiety, depression, and humiliation.

TROIANI/KIVITZ, L.L.P.

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Bebe H. Kivitz, Esquire  
Dolores M. Troiani, Esquire  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I, Bebe H. Kivitz, hereby certify that Plaintiff's Self-executing Disclosures was served via facsimile and U.S. mail, postage prepaid, on the following:

Patrick J. O'Connor, Esquire  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103

TROIANI/KIVITZ, L.L.P.

Date: April 6, 2005

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Bebe H. Kivitz  
Dolores M. Troiani  
Attorney for Plaintiff